



DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-502]

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Court Decision Not in Harmony with the Final Results of Antidumping Administrative Review; Notice of Amended Final Results of Antidumping Administrative Review; 2016-2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 17, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Saha Thai Steel Pipe Public Company Ltd. et al. v. United States*, 538 F. Supp. 3d 1350 (CIT 2021) (*Saha Thai III*), sustaining the U.S. Department of Commerce's (Commerce) second and final results of redetermination pertaining to the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand covering the period of review (POR) March 1, 2016, through February 28, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review and that Commerce is amending the final results of review with respect to the weighted-average dumping margin assigned to Pacific Pipe Public Company Limited (Pacific Pipe), Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai), and Thai Premium Pipe Company Ltd. (Thai Premium).

DATES: Applicable September 27, 2021.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3797.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2018, Commerce published its *Final Results* of the 2016-2017 antidumping duty administrative review of pipes and tubes from Thailand.¹ In the *Final Results*, Commerce determined that a particular market situation (PMS) existed in the Thai pipes and tubes market related to purchases of hot-rolled coil during the POR.

Mandatory respondents Pacific Pipe, Saha Thai, and Thai Premium challenged Commerce's *Final Results* before the CIT. On December 18, 2019, the CIT remanded the *Final Results* to Commerce for further consideration, holding that the PMS adjustment was not in accordance with law.² Specifically, the CIT stated that, although section 773(e) of the Tariff Act of 1930, as amended (the Act) "grants Commerce discretion to adjust a respondent's cost of production in an antidumping margin calculation upon finding a particular market situation, the margin calculation must be based on a comparison of U.S. prices to constructed value, not home-market or third-country prices."³

In the *First Redetermination* issued in March 2020, Commerce continued to find that a cost-based PMS existed in Thailand that distorted the price of hot rolled coil.⁴ Also, in response to the CIT's decision in *Saha Thai II* that, where Commerce determined a PMS existed, the PMS adjustment is limited to situations where normal value is based on constructed value, Commerce revised the margin calculations by basing normal value entirely on constructed value, and it continued to adjust each respondent's hot-rolled coil costs to account for the cost-based PMS.⁵

¹ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum.

² See *Saha Thai Steel Pipe Pub. Co. Ltd. v. United States*, 422 F. Supp. 3d 1363, 1367-70, 1372 (CIT 2019).

³ *Id.*, 422 F. Supp. 3d at 1369.

⁴ See *Final Results of Redetermination Pursuant to Court Remand, Saha Thai Steel Pipe Pub. Co., Ltd. v. United States*, Court No. 18-00214, Slip Op. 19-165, dated March 10, 2020 (*First Redetermination*).

⁵ See *First Redetermination*.

In December 2020, the CIT again remanded the issue to Commerce, holding that Commerce’s *First Redetermination* was not in accordance with law. The CIT ordered Commerce to “remove the cost-based {PMS} determinations and recalculate the relevant margins without a {PMS} adjustment.”⁶ The CIT held that nothing in the Act grants Commerce “authority to bypass the sales-below-cost test, and the specificity of the {} test leaves no ambiguity.”⁷

In the *Second Redetermination*, under protest, Commerce removed the cost-based PMS adjustments, and based normal value on each respondent’s respective home market sale prices.⁸ Commerce also reasserted its affirmative cost-based PMS determination and emphasized that “the clear intent of Congress” was for Commerce to remedy a PMS, despite its inability to provide such a remedy because of the CIT’s order.⁹ On September 17, 2021, the CIT issued an opinion sustaining Commerce’s *Second Redetermination*.¹⁰ The CIT held that Commerce’s continued PMS finding in the *Second Redetermination* was moot because Commerce’s recalculation of the respondents’ weighted-average dumping margins, without a cost-based PMS adjustment, was consistent with the CIT’s order and the affirmative PMS determination would have no practical significance.¹¹

Timken Notice

In its decision in *Timken*,¹² as clarified by *Diamond Sawblades*,¹³ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce

⁶ See *Saha Thai Steel Pipe Pub. Co. Ltd. v. United States*, 487 F. Supp. 3d 1323, 1331-35 (CIT 2020) (*Saha Thai II*).

⁷ *Id.*, 487 F. Supp. 3d at 1331-35.

⁸ See *Final Results of Redetermination Pursuant to Court Remand, Saha Thai Steel Pipe Pub. Co. Ltd. v. United States*, Court No. 18-00214, Slip Op. 20-181, dated March 15, 2020 (*Second Redetermination*).

⁹ *Id.* at 2-3.

¹⁰ See *Saha Thai III*.

¹¹ *Id.*, 538 F. Supp. 3d at 1353-54.

¹² See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹³ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 17, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Pacific Pipe, Saha Thai, and Thai Premium. The revised dumping margins are as follows:

Exporter/Producer	Final Results of Review: Weighted-Average Dumping Margin (percent)	Final Results of Redetermination: Weighted-Average Dumping Margin (percent)
Pacific Pipe Public Company Limited	30.61	7.38
Saha Thai Steel Pipe (Public) Company, Ltd.	28.00	0.00
Thai Premium Pipe Company Ltd.	30.98	5.23

Cash Deposit Requirements

Because Pacific Pipe, Saha Thai, and Thai Premium each have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). These amended final results of review will not affect the current cash deposit rates.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and exported by Pacific Pipe, Saha Thai, and Thai Premium, and were entered, or withdrawn from warehouse, for consumption during the period March 1, 2016, through February 28, 2017. These entries will remain enjoined unless the injunction is lifted by the court, pursuant to the terms of the injunction, during the pendency of any appeals process.

In the event the CIT's ruling is upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries covered by this review from Pacific Pipe, Saha Thai, and Thai Premium when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we intend to instruct CBP to liquidate the appropriate entries without regard antidumping duties.¹⁴

Commerce's "reseller policy" will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹⁵

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 8, 2022.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

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¹⁴ See 19 CFR 351.106(c)(2).

¹⁵ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).